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December 8, 2005

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Re: **In re Pharmaceutical Industry AWP Litigation (MDL 1456),
Civil Action No. 1:01- 12257-PBS**

Honorable Patti B. Saris
United States District Court for the
District of Massachusetts
One Courthouse Way
Boston, MA 02210

Dear Judge Saris:

In response your electronic order of December 6, 2005 regarding Professor Berndt, the Fast Track Five Defendants' position is as follows:

1. We do not intend to reargue before Your Honor factual issues underlying your August 16, 2005 opinion on class certification (the "Certification Opinion").

2. There remain nonetheless substantial factual issues regarding the permissibility under Rule 23 of plaintiffs' pending request to this Court to certify the various classes discussed in the Certification Opinion. These issues are set forth in Defendants' recently filed opposition to plaintiffs' proposed class certification wherein Defendants discuss, *inter alia*, the substantial unresolved factual issues which make Rule 23 certification of classes represented by those named in the Third Amended Master Consolidated Complaint ("TAMCC"), filed on October 17, 2005, improper. In addition, in light of plaintiffs' recent amendment to the TAMCC adding another proposed representative and plaintiffs' suggestion to Defendants that they may still attempt to add yet another proposed representative for proposed classes 2 and 3, there are likely to be additional relevant factual issues arising out of the discovery of these new plaintiffs.

3. Because the factual matters still at issue before Your Honor bear on the adequacy and typicality of the proposed class representatives and thereby the propriety of certifying the classes discussed in the Certification Opinion,

Honorable Patti B. Saris

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Defendants believe that Dr. Berndt's continued involvement in the case may be of use to the Court.

Please let me know if you would like any additional information in advance of the January 19, 2006 hearing.

Sincerely,

A handwritten signature in black ink that reads "D. Scott Wise". To the right of the name, there is a small, less legible handwritten note that appears to say "per my L".

D. Scott Wise

cc: All Counsel (via File & Serve)